

its face, the Notice contains objectionable requirements, seeking discovery of information not relevant to any claim or defense in this action and seeking discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence, as well as making demands that are patently oppressive and unduly burdensome.

A. The Notice Should Be Quashed.

In November 1990, Complainant (Millicom Services Company), a New York partnership,⁴ filed an informal complaint with the Federal Communications Commission (Commission) against Southwestern Bell, protesting the assessment of End User Common Line (EUCL) charges on independent payphone provider (IPP) lines.⁵ By letter dated July 3, 1991, Southwestern Bell responded to and denied Complainant's informal complaint.⁶

⁴ In its Motion, the Complainant is referred to as "New York City Telecommunications Company, Inc. (f/k/a Millicom Services Company)" [NYCTC]. Yet NYCTC was never formerly known as Millicom Services Company. In sworn responses to discovery propounded by Verizon in another case, NYCTC admits that it was originally incorporated in Nevada as ATI Services, Inc. in 1993. Later ATI Services, Inc. changed its name to MSC Services, Inc., which later changed its name to NYCTC. NYCTC claims that Millicom Services Company sold "its assets" to NYCTC (presumably when NYCTC called itself ATI Services, Inc.) in November 1993. Yet, as will be seen below, Millicom Services Company, a partnership, had already sold its payphone assets in SWBT's territory to Peoples in 1992. Consequently, whatever it sold to NYCTC in 1993 did not include those assets. Regardless, the sale of assets does not give NYCTC the right to supplant Millicom Services Company in this action. Even if Millicom Services Company had assigned its claims against SWBT over to NYCTC, those claims would only be those claims Millicom Services Company had until the date of the assignment. Such an assignment, if there were one, would not allow NYCTC to come into this case to assert not only the assigned claims but also any claims NYCTC might have after the date of the assignment. Again, as will be seen below, Millicom Services Company admits to having no damages; therefore, even if there were an assignment, it would not have included damages. Partnerships do not transmogrify into corporations; they are separate and distinct legal entities. NYCTC was never "f/k/a" (formerly known as) Millicom Services Company. See "Complainant's Responses and Objections to Defendant's First Set of Interrogatories," *In the Matter of C. F. Communications Corp., et al. v. Century Tel. Of Wisconsin, Inc.*, EB Docket No. 01-99, File Nos. E-93-46, E-93-47, E-93-48, responses to interrogatories nos. 1, 2, and 3, pp. 3 through 5, attached at **Tab B**.

⁵ *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Complaint (Corrected Copy), FCC File No. E-93-49, pp. 1 and 4, (Jan. 28, 1993) (*Complaint*). *Complaint* is attached at **Tab C**.

⁶ *Complaint*, p. 4, Exhibit 2. Southwestern Bell contends, and the Commission agrees, that, in order for a complainant to take advantage of the "relation-back rule," Commission Rule 1.718, the informal complainant would among other things need to file his, her or its formal complaint

In or around September 1992, four months before Complainant filed its formal Complaint in this case, Peoples Telephone Company, Inc. (Peoples) purchased Complainant's 238 pay telephones in the State of Texas.⁷

On January 14, 1993, Complainant filed its formal Complaint, which is the pleading that governs Complainant's claim in this proceeding. Complainant filed a "corrected copy" of that Complaint on January 28, 1993.⁸ In its Complaint, Complainant alleged that it provided "IPP service to its customers at approximately 200 IPP stations in the State of Texas, each of which is connected to a telephone line provided by the defendant [Southwestern Bell]."⁹ In its Complaint, Complainant admitted that "Complainant ceased paying EUCL charges billed to its IPPs in November, 1990."¹⁰ In other words, Complainant admitted that it had stopped paying EUCL charges assessed by Southwestern Bell more than two years before it filed its formal Complaint.

Southwestern Bell filed a timely Answer, dated March 22, 1993, raising the affirmative defense of Statute of Limitations and agreeing with Complainant that it had stopped paying for EUCL charges in November 1990.¹¹ In its *Answer*, Southwestern Bell moved to dismiss

within six months of the date of the carrier's report. In this case, Complainant had until roughly January 3, 1992, in which to file its formal complaint in order to enjoy the benefits of Commission Rule 1.718. As it did not file a formal complaint until January 1993, Complainant cannot take advantage of the relation-back rule.

⁷ See, Peoples Telephone Company, Inc.'s "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For Fiscal Year Ended December 31, 1995," SEC File No. 0-16479, "Acquisitions," p. 10, a copy of which is attached at **Tab D** (Form 10-K).

⁸ *Complaint*.

⁹ *Complaint*, pp. 3 – 4. Complainant sold these assets to Peoples Telephone Company, Inc. in September 1992, see below.

¹⁰ *Complaint*, p. 7.

¹¹ *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Answer, FCC File No. E-93-49, ¶ 15, p. 2 (March 22, 1993) (*Answer*). *Answer* is attached at **Tab E**.

Complainant's Complaint, among other reasons, because it was "barred by the Statute of Limitations at 47 U.S.C. 415."¹²

On April 5, 1993, Complainant replied to the *Answer*. In its *Reply*, Complainant incorporated by reference its "Opposition to Defendant's Motion," filed along with the *Reply*.¹³ In its "Opposition to Defendant's Motion" (*Opposition*), Complainant did not refute the underlying factual allegation made in support of Southwestern Bell's Motion to Dismiss (i.e., that Complainant had ceased paying EUCL charges in November 1990). Rather, Complainant argued that its claims were not barred by the Statute of Limitations because, read in conjunction with Commission Rule 1.717, Commission Rule 1.718 allows for a relation back to the date of the filing of the informal complaint. Complainant's argument appears to be that the duty to file within six months in order to enjoy the relation-back benefit of Commission Rule 1.718 begins to run from the date of the "Commission's disposition."¹⁴

In the *Liability Order*,¹⁵ the Commission established the applicability of the two-year statute of limitations¹⁶ and explained that Complainant's novel theory — that the running of the statute related back to the filing date of the informal complaint because the Commission had not disposed of the informal complaint — was without merit:

Similarly, we reject complainants' argument that this "relating back" provision is dependent upon when the Commission had "disposed" of an informal complaint. Rather, the clear language of section 1.718 of the rules allows for "relating back" of

¹² *Answer*, "Motion to Dismiss or in the Alternative to Stay Proceedings," pp. 3 – 4.

¹³ *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Reply, FCC File No. E-93-49, p. 1 (April 7, 1993) (*Reply*). *Reply* is attached at **Tab F**.

¹⁴ Complainant's "Opposition to Motion to Dismiss or in the Alternative to Stay Proceedings," pp. 1 – 4 (April 5, 1993) (*Opposition*). *Opposition* is attached at **Tab G**.

¹⁵ *In the Matter of C.F. Communications Corp. et al. v. Century Telephone of Wisconsin, Inc.*, FCC File Nos. E-89-170, *et seq.*, *Memorandum Opinion and Order on Remand* (rel. April 13, 2000)(*Liability Order*). *Liability Order* is attached at **Tab H**.

¹⁶ *Id.* at ¶ 36, citing 47 U.S.C. § 415.

damages only if a complainant files a formal complaint within 6 months “from the date of the carrier's report.”¹⁷

Consequently, under these facts, Complainant's claims for damages are limited to those EUCL charges paid by Complainant during the period beginning no more than two years before Complainant filed its formal complaint — roughly from January 1991 forward. Yet, as Complainant admits in its Complaint, it had not paid any EUCL charges since November 1990, and, as shown in the Peoples 10-K filing with the SEC, Millicom sold its Texas payphones to Peoples in September 1992; therefore, there are no damages for Complainant to recover in this case.

On July 6, 2001, Complainant filed its Notice seeking to take the deposition of SWBT's employees. These depositions are entirely unnecessary because Complainant has not been damaged. The pleadings filed by the Complainant establish conclusively that it stopped paying EUCL charges in November 1990 — a point beyond even the reach of the statute of limitations. What's more, Complainant sold its payphone business in Texas to Peoples in September 1992, four months before it filed its formal complaint.¹⁸

B. The Notice Should be Limited.

SWBT has numerous objections to the requirements Complainant seeks to impose on SWBT by means of the Notice. SWBT respectfully asks that these requirements either be struck in their entirety or, in the alternative, be limited. SWBT has the following objections:

¹⁷ *Id.* at ¶ 37.

¹⁸ As discussed in footnote 4 above, an entity calling itself New York City Telecommunications, Inc. claims to be a “successor in interest” to Complainant Millicom Services Company. While this claim is without legal basis or merit, SWBT notes that, in its responses to Verizon's interrogatories propounded in another case, NYCTC claims that Millicom Services Company sold all its assets to NYCTC in November 1993. For the sake of argument, SWBT notes that, had Millicom Services Company sold any chose-in-action it might have had against SWBT to NYCTC in 1993, then NYCTC as the assignee could assert claims once owned by Millicom Services Company up through the date of sale, but not beyond. Claims beyond that date, if any, would have been NYCTC's and NYCTC would have had to have filed a complaint in its own name and on its own behalf in order to assert them. Consequently, in addition to all the rest, there is no basis for assuming that discovery in this case should be permitted for any time after November 1993, presumably the date of sale.

1. The Notice directs that SWBT appear at the offices of Complainant's attorneys — Dickstein Shapiro Morin & Oshinsky — for these depositions.¹⁹ SWBT requests that Complainant be ordered to conduct the depositions either at SWBT's attorney's offices at 1401 I Street, N.W., Washington, DC, or at a mutually agreed upon neutral location within the District of Columbia.

2. SWBT objects to the definition of "Complainant" or "Plaintiff" as anything other than Millicom Services Company, a New York partnership.²⁰ There is no legal basis in the record of this case to include other persons or entities within the definition of those terms. In addition to there being no legal basis for including these other entities with these definitions, SWBT also notes that this definition is not relevant to any claim or defenses asserted in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Also, this definition is objectionable as being unduly burdensome and oppressive.

3. SWBT objects to defining "Southwestern Bell Telephone Company" to anyone other than that corporate entity and its agents, employees, or legal representatives.²¹

4. SWBT object to the definitions of the terms "identify," "identification," "describe," "description," and "state" on the grounds that it is impossible to request deponents to provide such information within the deposition format.²²

5. SWBT objects to seeking to obtain discovery of facts or other information not relevant to any claim or defense in this case, especially where such information is not reasonably calculated to lead to the discovery of admissible evidence as is the case in paragraphs 1, 2, 6, 7, and 9 or otherwise. Such paragraphs seek discovery of facts and information for periods beyond the

¹⁹ Notice, pp. 1-2.

²⁰ Notice, "Attachment A," "Definitions," ¶ 3, p. 3.

²¹ *Id.* At ¶ 4, p. 4.

²² *Id.* At ¶ 7, p. 5.

applicable two-year statute of limitations; i.e., before January 1991, and after Complainant sold its assets to Peoples, i.e., after September 1992.²³

6. SWBT objects to paragraph 2 of Topics of Inquiry as being overly broad and unduly burdensome and oppressive. SWBT objects to this paragraph on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁴

7. SWBT objects to paragraph 3 of Topics of Inquiry on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁵

8. SWBT objects to paragraph 4 of Topics of Inquiry on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁶

9. SWBT objects to paragraph 6 of Topics of Inquiry on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁷

10. SWBT objects to paragraph 7 of Topics of Inquiry on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁸

²³ Notice, "Topics of Inquiry," at ¶ 1, 2, 6, 7, and 9, pp. 7 through 9.

²⁴ *Id.* At ¶ 2, p. 7.

²⁵ *Id.* At ¶ 3, p. 7-8.

²⁶ *Id.* At ¶ 4, p. 8.

²⁷ *Id.* At ¶ 6, p. 8.

²⁸ *Id.* At ¶ 7, p. 8.

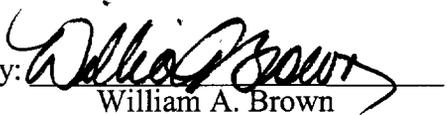
11. SWBT objects to paragraph 9 of Topics of Inquiry on the grounds that it seeks the disclosure of facts or information that are not relevant to the claims and defenses in this case and that are not reasonably calculated to lead to the discovery of admissible evidence.²⁹

WHEREFORE, SWBT respectfully moves for an order quashing the Complainant's "Notice of Deposition" for the reasons stated below and directing that the depositions not be taken or, in the alternative, a protective order limiting the scope of any such depositions and striking objectionable aspects of the Notice of Deposition.

Respectfully submitted,

SOUTHWESTERN BELL
TELEPHONE COMPANY

Dated: July 13th, 2001

By: 
William A. Brown

William A. Brown
Davida M. Grant

SBC Telecommunications, Inc.
1401 I Street, N.W., 4th Floor
Washington, DC 20005
(202) 326-8904 — Voice
(202) 408-8745 — Facsimile

Its Attorneys

²⁹ *Id.* At ¶ 9, p. 9.

CERTIFICATE OF SERVICE

I, William A. Brown, the undersigned attorney of record, do hereby certify that I have caused copies of the foregoing "**DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION OPPOSING THE TAKING OF DEPOSITIONS**" to be served in accordance with 47 C.F.R. § 1.735(f) via hand delivery or via facsimile transmission, followed by regular U.S. mail delivery, postage prepaid, this 30th day of July, 2001, to each of the following persons:

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554
Via Hand Delivery

Arthur I. Steinberg, Administrative Law Judge
Federal Communications Commission
445 - 12th Street, S.W., Room 1-C861
Washington, DC 20054
Courtesy Copy, Via Regular Mail

Tejal Mehta
Federal Communications Commission
Enforcement Bureau
Market Disputes Resolution Division
445 12th Street, S.W.
Washington, DC 20554
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David Solomon, Chief
Federal Communications Commission
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Albert H. Kramer
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William A. Brown

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- Tab C Complaint (Corrected Copy), *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, FCC File No. E-93-49.
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- Tab E Answer, *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, FCC File No. E-93-49 (March 22, 1993).
- Tab F Reply, *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, FCC File No. E-93-49, p. 1 (April 7, 1993).
- Tab G Complainant’s “Opposition to Motion to Dismiss or in the Alternative to Stay Proceedings,” (April 5, 1993).
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Tab

A

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

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E-Mail Address: KramerA@dsmo.com

July 6, 2001

Magalie Roman Salas, Secretary
Office of the Commission Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, DC 20554

Re: C.F. Communications Corp., et. al. v. Century Tele. Of Wisconsin, Inc., et. al.
EB Docket No. 01-99
File No. E-93-49

Dear Secretary Salas:

Enclosed for filing please find an original and three copies of a Notice of Deposition in the above referenced case.

If you have any questions, please do not hesitate to call.

Sincerely,



Albert H. Kramer

Att.

cc: The Honorable Arthur I. Steinberg (first-class mail)
William A. Brown, Esq., and Davida Grant, Esq. (facsimile and first-class mail)
Attached Service List (first-class mail)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

C.F. Communications Corp., et. al.,)
)

Complainants,)
)

v.)

Century Telephone of Wisconsin, Inc.,)
et. al.,)
)

Defendants.)
_____)

EB Docket No. 01-99

File No. E-93-49

To: **Arthur I. Steinberg**
Administrative Law Judge

and

Southwestern Bell Telephone Company

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Section 1.315 of the Commission's Rules, 47 C.F.R. § 1.315, and Rule 30(b)(6) of the Federal Rules of Civil Procedure, complainant, New York City Telecommunications Company, Inc. (f/k/a Millicom Services Company), through its counsel, hereby gives notice that it will take the deposition, upon oral examination, of defendant Southwestern Bell Telephone Company ("SBC"), 1401 I Street NW, Suite 1100, Washington, DC 20005, on July 30, 2001, beginning at 9:30 a.m., in the offices of Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street NW,

Washington, DC 20037-1526. The deposition shall be conducted by an officer authorized by law to administer oaths, for the purpose of discovery and/or use as evidence in the above-captioned case. The deposition will be recorded stenographically and will continue from day-to-day until completed.

Pursuant to Fed. R. Civ. P. 30(b)(6), SBC shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, as to all information known or reasonably available to SBC regarding any and all matters identified in Attachment A to this notice.

Dated: July 6, 2001

Respectfully submitted,

By 
Albert H. Kramer
Katherine J. Henry
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700
Attorneys for Complainant
New York City Telecommunications
Company, Inc. (f/k/a Millicom Services
Company)

Attachment A

Definitions

1. The terms "and" as well as "or," as used herein, shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside its scope.

2. The phrase "Commission definition," as used herein, shall mean the definition of public and semi-public pay telephone service set forth by the Federal Communications Commission in the *First Reconsideration Order*, 97 FCC 2d at 704, n. 40 and n. 41, as clarified in the *Liability Order*, 15 FCC Rcd at 8771, specifically:

A pay telephone is used to provide semipublic telephone service when there is a combination of general public and specific customer need for the service, such as at a gasoline station or pizza parlor. *First Reconsideration Order*, 97 FCC 2d at 704, n. 40. The BOCs provide directory listing with this service. *Id.* (citation omitted). A pay telephone is used to provide public telephone service when a public need exists, such as at an airport lobby, at the option of the telephone company and with the agreement of the owner of the property on which the phone is placed. *Id.* at 740, n. 41 (citation omitted). The dichotomy set forth in the *First Reconsideration Order* required us to evaluate the manner in which the payphone was used – e.g., whether it was used in a manner that allowed for identification of an end user. *Liability Order*, 15 FCC Rcd at 8771, ¶ 20.

3. The terms "Complainant," and/or "Plaintiff," as used herein, shall include New York City Telecommunications Company, Inc., Millicom Services Company, Millicom Communications, Inc., ATI Services, Inc., MSC Services, Inc., and any and all

predecessors or successors of these entities, as well as individuals or entities acting on behalf of any of these entities.

4. The terms "Defendant," "SBC" and "Southwestern Bell Telephone Company," as used herein, shall be defined to include the Defendant, Southwestern Bell Telephone Company ("SBC"), and any and all of its predecessors, successors, parents, subsidiaries, or divisions, as well as any agents, attorneys, employees, or other persons acting on behalf of any of these entities.

5. The terms "director," "officer," "employee," "agent," or "representative," as used herein, shall mean any individual serving as such and any individual serving at any relevant time in such capacity, even though no longer serving in such capacity.

6. The term "document(s)" or "record(s)" as used herein, means all materials within the full scope of Federal Rule of Civil Procedure 34, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation, correspondence, memoranda, notes, diaries, minutes, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, telegrams, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes, telefax, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural

representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, videotape, recordings, motion pictures, plans, drawings), and electronic, mechanical, magnetic, optical or electric records or representations of any kind (including without limitation, computer files and programs, tapes, cassettes, discs, recordings).

7. The terms "identify," "identification," "describe," "description" or "state" as used herein, shall mean:

(a) with respect to a person, his or her name and present (of if unknown, the last known) home and business addresses, present (of if unknown, the last known) place of employment, date(s) of commencement and termination of employment, job title and description of his or her duties and responsibilities;

(b) with respect to a corporation or other legal entity, the full name, address and state of incorporation, if known, and the identity of the person(s) who acted on behalf of such entity with respect to the subject matter of the Topic;

(c) with respect to a document, the type of document (*e.g.*, letter, telex, contract, calendar pad, report), the number of pages of which it consists, a general description of the document's contents, identification of the person(s) who prepared the document, for whom it was prepared, who signed it, to whom it was delivered, mailed, or otherwise received, and to whom a copy was sent or otherwise received, date of writing, creation or publication, the identifying number(s), letter(s), or combination thereof, if any, and the significance or meaning of such number(s), letter(s) or combination thereof, and the present location and identity of the custodian of that document.

8. The terms "person" or "persons," as used herein, shall mean natural persons (including those employed by the Complainant or Defendant), and any and all such person's principals, employees, agents, attorneys, consultants, and other representatives, and shall also include any partnership, foundation, proprietorship, association, organization, or group of natural persons.

9. The terms "concerning," "relating to" and "referring to," as used herein, shall be interpreted so as to encompass the scope of discovery set forth in Federal Rule of Civil Procedure 26(b)(1).

Topics of Inquiry

1. The total amounts of EUCL charges imposed by SBC on telephone lines subscribed to by Complainant in the State of Texas (i) during the period from 1987 through 1990 and (ii) during the period from 1991 through April 16, 1997, including the identification of (a) any and all records which SBC reviews or relies upon to determine such amounts or which otherwise describe or identify such EUCL charges and (b) any and all bases for any computations made by SBC to determine such amounts.

2. With respect to each SBC telephone line subscribed to by Complainant in the State of Texas during the periods from (i) 1987 through 1990 and (ii) 1991 through April 16, 1997:

(a) the identification of each and every instance for which SBC maintains that any EUCL charges billed on any such line were never paid, in whole or in part, including the identification for each such line of: (i) the amount not paid; (ii) the date such charge was billed; (iii) the date payment was due; (iv) the amount of any late charges, penalties, and/or interest imposed due to the non-payment of the EUCL charges; (v) whether telephone service was ever terminated or threatened to be terminated as a result of such non-payment and, if so, when; (vi) whether any lawsuit was ever instituted by SBC regarding such non-payment; and (vii) all records evidencing, relating, or referring to the non-payment of the EUCL charges, including but not limited to, any deficiency notices, suspension notices, or termination notices;

(b) the identification of each and every instance for which SBC maintains that any EUCL charges billed on any such line were ever paid late, in whole or in part, including the identification for each such line of: (i) the amount paid late; (ii) the date such charge was billed; (iii) the date payment was due; (iv) the amount of any late charges, penalties, and/or interest imposed due to the delay in payment; (v) whether telephone service was ever terminated or threatened to be terminated as a result of such delay in payment and, if so, when; (vi) whether any or all of the charges remain unpaid and, if not, when such charges were paid; (vii) whether any lawsuit was ever instituted by SBC regarding such delay in payment; and (viii) all records evidencing, relating, or referring to the late payment of the EUCL charges, including but not limited to, any deficiency notices, suspension notices or termination notices.

3. All criteria employed by SBC for determining whether a payphone should be tariffed as "public" or "semi-public," including the identification of any and all documents

that were either (a) generated by employees or agents of SBC or (b) distributed to employees or agents of SBC which describe, identify, set forth, or otherwise relate to, the criteria employed by SBC in this regard.

4. All attributes that SBC considers relevant to determining whether a payphone is "public" or "semi-public" under the Commission definition, including the identification of any and all documents that were either (a) generated by employees or agents of SBC or (b) distributed to employees or agents of SBC which describe, identify, set forth, or otherwise relate to, the attributes that SBC considers relevant to determine whether a payphone is "public" or "semi-public" under the Commission's definition.

5. All information concerning any determinations made, or any consideration given, by SBC as to the classification of one or more of Complainant's payphones as (i) "public" or (ii) "semi-public," including any and all documents relating to such determinations or consideration.

6. The ratio of (i) "public" and (ii) "semi-public" payphones to the total number of payphones that SBC had in operation in the State of Texas during each month of the periods (i) from 1987 through 1990 and (ii) from 1991 through April 16, 1997, including the identification of any and all records that SBC reviews or relies upon, and the identification of any and all bases for any computations made by SBC, to derive this ratio.

7. SBC's business practices and/or policies during the period from 1987 through April 16, 1997 regarding non-payment of telephone bills, and/or EUCL charges, and/or other charges, by independent payphone providers, business line subscribers, and/or residential line subscribers, including but not limited to, whether telephone service would be terminated due to such non-payment and, if so, when such termination would occur, and including the identification of any and all documents which identify, describe or relate to such business practices and/or policies.

8. The identification of any and all occasions when SBC authorized Complainant to place any amounts billed to Complainant for EUCL charges in escrow or

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agreed to the placement of such amounts in escrow, including the identification of any and all communications, documents, and/or records regarding such authorization or agreement.

9. SBC's document retention and destruction policy or policies during the period from 1987 through the present, including but not limited to, any and all policies relating to the retention or destruction of billing records, installation records, and payment records, and any and all policies relating to the retention or deletion of electronic or computerized records.

10. The location, storage and maintenance of any and all billing, installation and payment records, whether in hard copy, electronic, microfiche, microfilm or any other form, that are potentially responsive to Complainant's discovery requests in this proceeding, including all information relating to any and all means for accessing and retrieving such records and the identification of any and all documents relating to such records and to the means for accessing and retrieving the same.

11. The scope and extent of any search conducted by SBC for documents responsive to Complainant's First Set of Requests for the Production of Documents and Complainant's First Set of Interrogatories directed to SBC in Administrative Proceeding No. E-93-49.

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2001, a copy of the foregoing complainant's Notice of Deposition of Defendant Southwestern Bell Telephone Company was served by facsimile and first-class mail, postage prepaid, on William A. Brown, Esq., and Davida M. Grant, Esq., Southwestern Bell Telephone Company, 1401 I Street, NW, Suite 1100, Washington, DC 20005, and by first-class mail, postage prepaid, on the following parties:

The Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Room 1-C861
Washington, DC 20554

Magalie Roman Salas, Secretary
Office of the Commission Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, D.C. 20554
(Original and Three Copies)

Tejal Mehta, Esquire
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
445 12th Street, SW
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Charles V. Mehler III